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9 MIKE HONDA FOR CONGRESS

10
11 IN THE UNITED STATES DISTRICT COURT

12 NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION

13 MIKE HONDA FOR CONGRESS,
14 an unincorporated political association,
15 *Plaintiff,*

16 vs.

17 BRIAN PARVIZSHAHI, an individual,
18 RO FOR CONGRESS, INC.,
19 a California corporation,
20 ROHIT "RO" KHANNA, an individual,
21 and DOES 1 through 10,
22 *Defendants.*

CASE NO.

**NOTICE OF MOTION AND MOTION
FOR PRELIMINARY INJUNCTION;
POINTS AND AUTHORITIES**

HEARING DATE: TBD
HEARING TIME: TBD
JUDGE: TBD
COURTROOM: TBD

NOTICE OF MOTION

TO THE COURT, THE PARTIES AND THEIR ATTORNEYS OF RECORD:

Please take notice that, as soon as this matter may be heard before the assigned judge in the United States District Court for the District of Northern California, San Jose Division, located at 280 South First Street, San Jose, California 95113, Plaintiff Mike Honda for Congress will move this Court to issue a *preliminary injunction* (1) enjoining Defendant Brian Parvizshahi, Defendant Ro for Congress, Inc., and Defendant Rohit “Ro” Khanna from violating, and continuing to violate, the Computer Fraud and Abuse Act (“CFAA”, 18 U.S.C. §1030); (2) enjoining Defendant Parvizshahi, Defendant Ro for Congress, Inc., and Defendant Khanna from continuing to use Mike Honda for Congress’ confidential and proprietary information that they have illegally obtained in violation of the CFAA, and (3) ordering Defendant Brian Parvizshahi, Defendant Ro for Congress, Inc., and Defendant Rohit “Ro” Khanna to promptly disgorge and destroy all confidential and proprietary information that they have illegally obtained in violation of the CFAA.

Plaintiff’s Motion is based on this Notice of Motion and Motion, along with the accompanying Memorandum of Points and Authorities, Request for Judicial Notice, and the Declarations of Garnetta Annable, Michael Beckendorf, Judy Bertelsen, Robert Eberhardt, Kalyn Free, Fayzan Gowani, Hon. Robert “Bob” Hasegawa, Hon. Michael “Mike” M. Honda, Madalene Xuan-Trang Mielke, Dale Minami, Gautam Dutta, Bill O’Day, and Alison Woodworth.

1 DATED: Sept. 22, 2016

2
3 Respectfully submitted,

4
5 By: /s/ Gautam Dutta
GAUTAM DUTTA, ESQ.

6 Attorneys for Plaintiff

7 MIKE HONDA FOR CONGRESS
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TABLE OF CONTENTS

I.	Notice of Motion	2
II.	Introduction	5
III.	Background	5
IV.	Factual Background	6
IV.	Legal Analysis	18
V.	Conclusion	26

MEMORANDUM OF POINTS AND AUTHORITIES

I. Introduction

Unless the Court grants this Motion, Mike Honda for Congress will suffer irreparable harm – and the privacy of *thousands* of supporters of U.S. Rep. Mike Honda will continue to be violated – because Defendants Brian Parvizshahi, Ro for Congress, Inc., and Rohit “Ro” Khanna have illegally seized, used, and abused confidential, proprietary information belonging to Mike Honda for Congress. In so doing, Defendants violated, *inter alia*, the Computer Fraud and Abuse Act (“CFAA”, 18 U.S.C. §1030).

Time is of the essence. The Nov. 8, 2016 election between Rep. Honda and Defendant Khanna will be held in a matter of weeks. To date, confidential, proprietary information belonging to Mike Honda for Congress has been illegally released. Equally troubling, potentially thousands of supporters of Mike Honda for Congress have been personally pressured and intimidated by Defendant Khanna at a place that they had least expected: their own email inbox.

The illegal data breach perpetrated by Defendants has already personally embarrassed Rep. Honda, compromised his relationship with supporters, and harmed his reputation. Unless this Court swiftly intercedes, Mike Honda for Congress and thousands of Rep. Honda’s supporters will continue to suffer irreparable harm.

II. Procedural Background

A. The Parties

Plaintiff **Mike Honda for Congress** is an unincorporated political association with its principal place of business in Santa Clara County, California.

Defendant **Brian Parvizshahi** works from a place of business located in Santa Clara County, California.

Defendant **Ro for Congress, Inc.**, a California corporation that was incorporated in 2011, conducts business from and maintains an office in Santa Clara County, California.

Defendant **Rohit “Ro” Khanna** is a resident of Alameda County, and works from a place

of business located in Santa Clara County.¹

B. Jurisdiction and Venue

This action arises under 18 U.S.C. §1030 and 18 U.S.C. §§1832, *et seq.* in relation to Defendants' unlawful actions. Accordingly, this Court has federal-question jurisdiction under 28 U.S.C. §1331 and 28 U.S.C. §1343.

All or most of the practices, events, and omissions alleged in this Complaint occurred in Santa Clara County. Accordingly, venue is appropriate for the U.S. District Court for the Northern District of California, San Jose Division, pursuant to 28 U.S.C. §1391(b)-(c).

III. Factual Background

A. The Race for California's 17th Congressional District

Rep. Mike Honda represents California's 17th Congressional District, an area that comprises a core part of Silicon Valley: Cupertino, Sunnyvale, Santa Clara, Milpitas, Newark, and parts of San Jose and Fremont.²

In 2004, Defendant Khanna unsuccessfully ran for the U.S. House of Representatives against the late Congressman Tom Lantos, who represented San Mateo County and a part of San Francisco County. In 2014, Defendant Khanna unsuccessfully challenged Congressman Honda for his current seat. Because they were the top two finishers in California's June 7, 2016 "Top Two" Primary, Congressman Honda and Defendant Khanna advanced to the looming Nov. 8, 2016 general election.³

Defendant Parvizshahi joined Defendant Ro for Congress, Inc. as Data Director in January 2014, and was promoted to Campaign Manager the following year.⁴

B. Defendant Parvizshahi's Brief Internship with Mike Honda for Congress' Consultant

On April 25, 2005, Mike Honda for Congress and Madalene Mielke entered into an

¹ Dutta Decl. ¶¶3-6.

² Beckendorf Decl. ¶1.

³ Beckendorf Decl. ¶¶5-7.

⁴ Beckendorf Decl. ¶8 & Exh. 2.

1 agreement (the “Agreement”), whereby Ms. Mielke became the fundraising consultant to Mike
 2 Honda for Congress.⁵ Pursuant to the Agreement (art. VI), Mike Honda for Congress solely or
 3 jointly owned all information (including fundraising and donor information) developed during the
 4 term of the Agreement. All such information was deemed “confidential” and was required to be
 5 held “in absolute confidence”.⁶

6 Subsequently, Ms. Mielke founded Arum Group, LLC. After Arum Group was
 7 incorporated, Ms. Mielke’s role as fundraising consultant under the Agreement was transferred to
 8 Arum Group.⁷ Pursuant to the terms of the Agreement, Arum Group served as fundraising
 9 consultant to Mike Honda for Congress until December 2014.⁸

10 Defendant Parvizshahi began what was intended to be his summer-long internship at
 11 Arum Group in May 2012.⁹ Like other Arum Group interns, Mr. Parvizshahi was required to sign
 12 an Internship Agreement, which contained a non-disclosure agreement (NDA) with respect to
 13 Arum Group’s confidential, client information.¹⁰ In relevant part, the Internship Agreement
 14 stated:

- 15 1. You agree that you will not in any way discuss information obtained in
 16 connection with your position with the Arum Group outside of the
 Arum Group’s clients.
- 17 2. You will treat any confidential or non-public information provided to
 18 you by the Arum Group as *strictly confidential*. Any dissemination or
 19 discussion regarding such confidential information is *prohibited* with
 anyone outside of the Arum Group, unless permission to disseminate or
 20 discuss such information is granted. This confidentiality requirement
shall survive the termination of this agreement.¹¹

21 Defendant Parvizshahi was given access to some of Arum Group’s confidential client
 22 information, including confidential, proprietary information belonging to Mike Honda for

23 ⁵ Mielke Decl. ¶7.

24 ⁶ Mielke Decl. ¶7.

25 ⁷ Mielke Decl. ¶10.

26 ⁸ Mielke Decl. ¶11.

27 ⁹ Woodworth Decl. ¶21.

28 ¹⁰ Mielke Decl. ¶¶17, 27-29.

¹¹ Mielke Decl. ¶20 & Exh. 1 (italics added).

1 Congress.¹²

2 C. Defendant Parvizshahi Gains Dropbox Access to Mike Honda for Congress'
3 Confidential, Proprietary Information

4 Dropbox is a cloud (online) storage service that is frequently used for sharing and
5 synchronizing files.¹³ Arum Group shared access of certain files within Arum Group's Dropbox
6 account by sending an "invitation" to the personal (i.e., non-Arum Group) email address
7 of every intern, including that of Defendant Parvizshahi.¹⁴

8 Defendant Parvizshahi was given access to two Dropbox folders: (1) an Intern folder, and
9 (2) a folder containing fundraising information relating to Mike Honda for Congress (hereinafter,
10 the "Honda Folders").¹⁵ During his internship, Mr. Parvizshahi disliked performing what he
11 deemed to be menial tasks.¹⁶

12 On June 8, 2012, Defendant Parvizshahi abruptly resigned from his internship. After his
13 last day at Arum Group, Mr. Parvizshahi's access to Arum Group's Dropbox account was
14 inadvertently not withdrawn.¹⁷ Arum Group continued to serve as the fundraising consultant for
15 Mike Honda for Congress until December 2014.

16 D. The Uniqueness of Each Dropbox Account

17 A Dropbox account is created using at least the following pair: a person's "username"
18 and password.¹⁸ This access granted to the person using that username is unique.¹⁹ For example,
19 suppose that one Dropbox account is created and then deleted, and later a second account is
20 created with the *same* username. In that scenario, the access to the shared data of the first account
21

22 ¹² Woodworth Decl. ¶¶13, 20.

23 ¹³ O'Day Decl. ¶7.

24 ¹⁴ Woodworth Decl. ¶19.

25 ¹⁵ Woodworth Decl. ¶20.

26 ¹⁶ Woodworth Decl. ¶23.

27 ¹⁷ Woodworth Decl. ¶25.

28 ¹⁸ O'Day Decl. ¶11.

¹⁹ O'Day Decl. ¶12.

1 would *not* be accessible to the second account.²⁰

2 Each Dropbox account has the ability to tie the account to an arbitrary number of
3 computers.²¹ Each computer would have an alias (nickname) assigned to it. Data on Dropbox is
4 shared by means of “user permissions”. For example, if user1@example.com authorizes access
5 to a shared folder (titled “SHARES”) to user2@example.com, user2 would be able to access all
6 files in SHARES from all devices until that access is withdrawn by user1.²²

7 Dropbox’s “Acceptable Use Policy” prohibits users from “violat[ing] the law in any way”,
8 or “even try[ing] to ... violate the privacy or infringe the rights of others.”²³

9 E. Sharing Information on Dropbox: “Edited”, “Removed”, and “Added”

10 In a shared Dropbox folder, all authorized users are granted access as “permissioned”
11 (generally, read-only access or full access).²⁴ Any change to a file is recorded on Dropbox as “In
12 <Shared Folder Name>, <user> <action> <filename>.”²⁵

13 There are three main types of “actions” that can be made to a Dropbox file.²⁶ A file can
14 be “edited”, “removed”, or “added”. An “edited” action means that the file had a new (updated)
15 version of itself uploaded to the shared location within the Dropbox account. “Edited” often
16 means that the file was *last* viewed by a user at the time the “edited” action was recorded on
17 Dropbox.²⁷

18 Notably, just because a file has been edited does not necessarily mean that the *content* of
19 the file has changed. Many files have additional “metadata” stored in them: information keeping
20 track of edits, summary information, view information, and other information relating to the state
21

22 ²⁰ O’Day Decl. ¶13.

23 ²¹ O’Day Decl. ¶14.

24 ²² O’Day Decl. ¶15.

25 ²³ See https://www.dropbox.com/privacy#acceptable_use (last visited Sept. 20, 2016).

26 ²⁴ O’Day Decl. ¶16.

27 ²⁵ O’Day Decl. ¶17.

28 ²⁶ O’Day Decl. ¶18.

²⁷ O’Day Decl. ¶19.

1 of a document outside of the content itself.²⁸ Such metadata are therefore much more volatile.
 2 For example, changing a Word document from “Print” view to “Draft” view would constitute a
 3 change in state and would be saved and recorded on Dropbox *even if* nothing else occurred.²⁹

4 A file that was “edited” *was definitely opened by the Dropbox user*. More could have
 5 been done to the file; but the “edited” marker indicates, at a bare minimum, that the file was
 6 opened.³⁰

7 A “removed” action means that the file was removed from the shared location within the
 8 Dropbox account.³¹

9 An “added” action means that a new file was added to the shared location within the
 10 Dropbox account.³² From a forensic standpoint, Dropbox files labeled as “added” are the most
 11 interesting, for those files are the ones with which that person making the change spent the most
 12 time.³³

13 If a Dropbox file shows an action of “added” and that file had existed *before* the “added”
 14 action occurred, it means that the file was (a) removed from the shared location within the
 15 Dropbox account, and then (b) was *re-added* (i.e., was moved back) to the shared location within
 16 the Dropbox account.³⁴ This scenario most often occurs when someone has *removed* the file to
 17 another location (e.g., his or her desktop) – and then *moved the file back* to the shared location
 18 within the Dropbox account.³⁵

19 F. Meaning of the “Desktop” Label in “Added” or “Edited” Actions

20 When Dropbox shows that a file has been “added” or “edited”, a label of “Desktop” or
 21 “Website” appears on the same line. That label (“Desktop” or “Website”) shows the *source* of

22 ²⁸ O’Day Decl. ¶20.

23 ²⁹ O’Day Decl. ¶21.

24 ³⁰ O’Day Decl. ¶22.

25 ³¹ O’Day Decl. ¶23.

26 ³² O’Day Decl. ¶24.

27 ³³ O’Day Decl. ¶25.

28 ³⁴ O’Day Decl. ¶26.

³⁵ O’Day Decl. ¶27.

1 the action that was taken.³⁶

2 If the label is “Desktop”, hovering over this label will reveal the alias (nickname) of the
3 computer used to make the edits.³⁷ If more than one alias is seen, it means that (1) more than one
4 computer was used to make the edits, and (2) the user had authorized a number of computers to
5 access both his or her personal Dropbox account and, by extension, any shared folders tied to that
6 account.³⁸

7 G. Defendant Parvizshahi Accesses Mike Honda for Congress’ Confidential,
8 Proprietary Data After Leaving His Internship With Mike Honda for Congress’
9 Consultant

10 After leaving Arum Group, Defendant Parvizshahi continued to access the confidential,
11 proprietary data belonging to Mike Honda for Congress. During the relevant period, Defendant
12 Parvizshahi accessed the Honda Folders from one of two computers: one had the alias of
13 “BrianParvi-PC”; the other had the alias of “BrianParvi”.³⁹

14 Between Feb. 7, 2013 and Sept. 20, 2013, Mr. Parvizshahi “edited”, “added”, or in some
15 way modified the Honda Folders at least a total of seven times: three times on Feb. 7, 2013, once
16 on Feb. 18, 2013, twice on June 23, 2013, and once on Sept. 20, 2013.⁴⁰ True and accurate copies
17 of screenshots of each file that Mr. Parvizshahi “edited”, “added” or in some way modified for
18 the period Feb. 7, 2013 through Sept. 20, 2013 have been reprinted in the accompanying
19 Declaration of Robert Eberhardt (¶18).

20 H. Defendant Parvizshahi Accesses Mike Honda for Congress’ Confidential,
21 Proprietary Data Throughout His Employment with Defendant Ro for Congress,
22 Inc.

23 After Jan. 2014 (when he began working for Defendant Ro for Congress, Inc.), Defendant
24

25 ³⁶ O’Day Decl. ¶28.

26 ³⁷ O’Day Decl. ¶29.

27 ³⁸ O’Day Decl. ¶30.

28 ³⁹ Eberhardt Decl. ¶16.

⁴⁰ Eberhardt Decl. ¶17.

Parvizshahi continuously accessed the Honda Folders. Specifically, Defendant Parvizshahi “edited”, “added”, or in some way modified individual documents within the Honda Folders at least forty-four (44) times.⁴¹ Several documents were “edited”, “added”, or in some way modified more than once.⁴² True and accurate copies of screenshots of each file that Defendant Parvizshahi “edited”, “added”, or in some way modified for the period Jan. 1, 2014 through June 14, 2015 are reprinted in the accompanying Declaration of Robert Eberhardt (¶20).

On June 15, 2015, Defendant Parvizshahi “edited” the Honda Folders for the last time.⁴³ True and accurate copies of screenshots of each file that Defendant Parvizshahi “edited”, “added”, or in some way modified on June 15, 2015 are reprinted in the accompanying Declaration of Robert Eberhardt (¶22).

I. Ro Khanna’s Email Accosting of Mike Honda for Congress Supporters

Beginning Saturday, Oct. 3, 2015, sixteen individuals contacted Mike Honda for Congress to report that Defendant Khanna had accosted Mike Honda for Congress supporters by directly emailing them on Oct. 3, 2015.⁴⁴ In each of those emails – which were sent in at least four batches at 3:10, 3:14, 3:15, and 3:17 pm PT – supporters were asked if they “might have time for a call” to discuss Defendant Khanna’s race against Congressman Honda.⁴⁵

In each of those emails, Defendant Khanna further stated that “Honda’s ethics scandal has convinced many voters about the need for change.”⁴⁶ Defendant Khanna’s email also contained, under the heading of “Recent Press”, links to a number of articles that were critical of Congressman Honda.⁴⁷

At the time, Honda for Congress did not know Mr. Khanna and his campaign had obtained the names and current email addresses of its donors. Those items are the *lifeblood* of any

⁴¹ Eberhardt Decl. ¶19.

⁴² Eberhardt Decl. ¶19.

⁴³ Eberhardt Decl. ¶21.

⁴⁴ Beckendorf Decl. ¶10.

⁴⁵ Hasegawa Decl. Exh. 2.

⁴⁶ Hasegawa Decl. Exh. 2.

⁴⁷ Hasegawa Decl. Exh. 2.

1 successful fundraising (and political) campaign.⁴⁸

2 The sixteen individuals who contacted Honda for Congress regarding Mr. Khanna's email
3 were likely the tip of the iceberg. Namely, for every donor who contacted Honda for Congress,
4 there likely were at least 50-100 donors who did *not* contact Honda for Congress.⁴⁹

5 As of today, Honda for Congress has gathered Declarations from six supporters of Mike
6 Honda for Congress regarding the emails that they received from Defendant Khanna on Oct. 3,
7 2015: **Garnetta Annable, Judy Bertelsen, Kalyn Free** (who lives in Oklahoma), **Fayzan**
8 **Gowani** (who has never resided in California's 17th Congressional District), **Washington State**
9 **Senator Bob Hasegawa** (who lives in Washington State), and **Dale Minami**.⁵⁰

10 Between 3:10 pm and 3:17 pm PT on Oct. 3, 2015, each of the six supporters received an
11 identical, blind-carbon-copied email from Defendant Khanna.⁵¹ In fact, two of the supporters
12 (Ms. Bertelsen and Ms. Free) received the email at the same time: 3:17 pm PT.⁵²

13 Currently, one of the six supporters (Ms. Gowani) is not even listed in the Federal
14 Election Commission's (FEC) donor records.⁵³ Another supporter (Ms. Annable) was not listed
15 in the FEC's donor records until May 28, 2016.⁵⁴

16 J. Defendant Khanna's Responses to Inquiries Regarding His Email Accosting of
17 Mike Honda for Congress Supporters

18 After being accosted by Defendant Khanna, Ms. Gowani asked, *inter alia*, Defendant
19 Khanna how he had obtained her contact information: "Also, please explain *how* you found
20

21 ⁴⁸ Beckendorf Decl. ¶14.

22 ⁴⁹ Beckendorf Decl. ¶15.

23 ⁵⁰ Annable Decl. ¶6 & Exh. 1; Bertelsen Decl. ¶6 & Exh. 1; Free Decl. ¶9 & Exh. 2, Gowani
Decl. Exh. 1, Hasegawa Decl. ¶9, and Minami Decl ¶8.

24 ⁵¹ Annable Decl. ¶6 & Exh. 1; Bertelsen Decl. ¶6 & Exh. 1; Free Decl. ¶9 & Exh. 2, Gowani
Decl. Exh. 1, Hasegawa Decl. ¶9, and Minami Decl ¶8.

25 ⁵² Free Decl. ¶9 & Exh. 2; Bertelsen Decl. ¶6 & Exh. 1.

26 ⁵³ Eberhardt Decl. ¶¶31, 32. Federal campaigns are required to report, to the Federal
27 Election Commission, donations of more than \$200 during an election cycle. *See* 52 U.S.C.
§30104(b)(3)(a); 11 C.F.R. §104.8(a).

28 ⁵⁴ Annable Decl. Exh. 2.

1 my email. *I have never and do not plan on voting or campaigning for you, nor have I ever*
 2 *resided in your district.*⁵⁵

3 In an email (sent from his iPhone) on which Defendant Brian Parvizshahi was copied (on
 4 his private, non-campaign email), Defendant Khanna answered in relevant part and asked
 5 Defendant Parvizshahi to “make sure” that Ms. Gowani had been removed from the “friends list”:

6 You were on a *friends list* as a prospect of someone who would find my campaign
 7 platform attractive as a next generation democrat. ... I am sorry you were
 8 included on this list and we will take you off per your request.

9 Brian, please make sure of that.⁵⁶

10 After being accosted by Mr. Khanna, Ms. Bertelsen told Mr. Khanna that she strongly
 11 supported Congressman Khanna.⁵⁷ One hour later, Mr. Khanna emailed her a response.
 12 Among other things, he stated: “I hope over the years I will be able to earn your trust.”⁵⁸

13 K. The Anonymous Release of a Document Containing Confidential, Proprietary
 14 Information Belonging to Mike Honda for Congress

15 On Dec. 16, 2015, San Jose *Inside* published, online, a document containing confidential
 16 information of donors to Mike Honda for Congress.⁵⁹ That document included the donors’
 17 names, preferred nicknames, employer information, personal telephone numbers, and preferred
 18 nicknames.⁶⁰ According to *Inside*, that document had “arrived in the mail” from an anonymous
 19 source in early December 2015.⁶¹

20 L. The Discovery of the Data Breach

21 On May 31, 2016, Randy Broz, the fundraising consultant for Mike Honda for Congress,
 22

23 ⁵⁵ Gowani Decl. Exh. 1 (italics added).

24 ⁵⁶ Gowani Decl. Exh. 1 (italics added).

25 ⁵⁷ Bertelsen Decl. ¶10 & Exh. 1.

26 ⁵⁸ Bertelsen Decl. ¶11 & Exh. 1.

27 ⁵⁹ Beckendorf Decl. ¶16 & Exh. 4.

28 ⁶⁰ Beckendorf Decl. ¶16 & Exh. 4.

⁶¹ Beckendorf Decl. ¶17 & Exh. 4.

received a notification from Dropbox that files in the “Honda” folder had been modified.⁶²

In response, Sudip Dutta, then the Finance Director of Mike Honda for Congress, sent an email to Arum Group’s Madalene Mielke, the previous fundraising consultant for Mike Honda for Congress, to inquire about those Dropbox files.⁶³

Ms. Mielke sent an email to Mr. Dutta that same day. In that email, Ms. Mielke stated that (1) Defendant Parvizshahi had previously been an intern for Arum Group, (2) Defendant Parvizshahi had not been previously removed from the Dropbox access list with respect to the files of Mike Honda for Congress, and (3) upon discovering that inadvertent oversight, she had removed Defendant Parvizshahi’s name from the Dropbox access list.⁶⁴

Subsequently, Michael Beckendorf, Campaign Manager of Mike Honda for Congress, requested access to the file from Ms. Mielke; and she provided him with access to the files in Dropbox. Mr. Beckendorf began to examine the Honda Folders to determine what information had been exposed.⁶⁵

In so doing, Mr. Beckendorf found that many files within the Honda Folders had timestamps noting that Defendant Parvizshahi had accessed and made edits to those files after he had left Arum Group, LLC and *throughout the time when he was working for Ro for Congress, Inc.*⁶⁶

That same day (May 31, 2016), Mr. Beckendorf contacted Robert Eberhardt, Mike Honda for Honda’s opposition researcher, to assist in assessing the nature of information that had been compromised. For this purpose, Mr. Eberhardt was given access to the Honda Folders.⁶⁷ Mr. Beckendorf also asked Vedant Patel, Communications Director to Mike Honda for Congress, to

⁶² Beckendorf Decl. ¶18 & Exh. 2.

⁶³ Beckendorf Decl. ¶19 & Exh. 2.

⁶⁴ Mielke Decl. ¶¶39, 40 & Exh. 2.

⁶⁵ Beckendorf Decl. ¶21.

⁶⁶ Beckendorf Decl. ¶22.

⁶⁷ Beckendorf Decl. ¶23.

1 assist in assessing the scope of the data breach.⁶⁸

2 It became clear to Mike Honda to Congress that Defendant Parvizshahi had begun
3 accessing confidential information belonging to Mike Honda for Congress after leaving Arum
4 Group, and had continued accessing that information while working for Ro for Congress, Inc.⁶⁹

5 After examining the Honda Folders, Mr. Beckendorf also discovered that a spreadsheet
6 entitled “2012 2010 Crane Club Cycle Report.xls” *matched perfectly* with the donor document
7 that had been anonymously provided to – and published by – San Jose *Inside* on Dec. 16, 2015.⁷⁰

8 In response, Mr. Beckendorf promptly notified Rep. Honda that Defendant Parvizshahi
9 had obtained access to the confidential, proprietary information of Mike Honda for Congress.⁷¹
10 In addition, Mr. Beckendorf sent an email to his Campaign Team at 4:48 pm on May 31, 2016. In
11 that email, Mr. Beckendorf notified the following members of Mike Honda for Congress that
12 Defendant Parvizshahi had obtained access to the campaign’s sensitive donor information:
13 Vedant Patel (Communications Director); Raghu Devaguptpu and Rachel Irwin (AL Media);
14 Adnaan Muslim and Mara Kunin (Mission Control, Inc.); David Mermin (Lake Research
15 Partners); Robert Eberhardt (Stanford Caskey); and Mike Nellis and MaryCate Brower
16 (Revolution Messaging).⁷²

17 In that email (at p.2), Mr. Beckendorf notified his Campaign Team that a significant
18 amount of our campaign’s confidential fundraising had been compromised:

19 Rob[ert Eberhardt] is currently through all the information that was
20 exposed to the Khanna campaign leading [up to] [20]15.
21 Safe to say that had access to EVERYTHING last cycle.⁷³

22 Shortly thereafter, Mr. Beckendorf received an email from Robert Eberhardt, Mike Honda
23 for Congress’ Opposition Researcher. In that email, Mr. Eberhardt stated: “Yeah, as Michael

24 ⁶⁸ Beckendorf Decl. ¶24.

25 ⁶⁹ Beckendorf Decl. ¶25.

26 ⁷⁰ Beckendorf Decl. ¶26.

27 ⁷¹ Honda Decl. ¶¶17, 18.

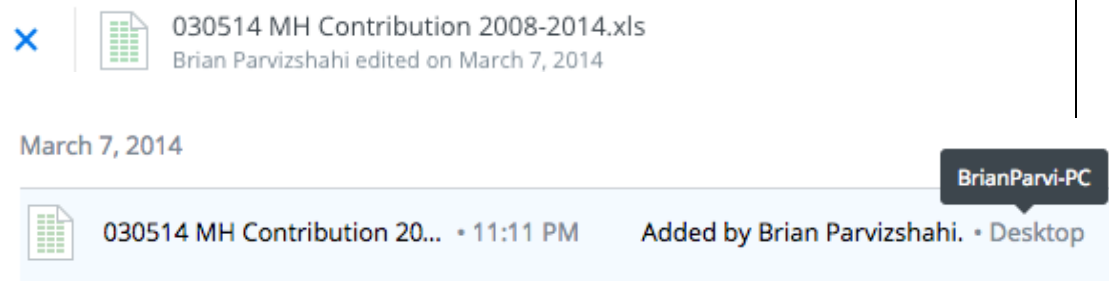
28 ⁷² Beckendorf Decl. ¶28.

⁷³ Beckendorf Decl. ¶29 & Exh. 1 (capitalization in original).

[Beckendorf] said, it looks like *everything* related to Mike Honda's fundraising over the last years is in this folder that Brian [Parvizshahi] had access to."⁷⁴ Among other things, Mr. Eberhardt stated that the Honda Folders contained personal contact information of the campaign's large-dollar and small-dollar donors.⁷⁵

M. The Donor Document Entitled "030514 MH contribution 2008-2014.xls"

As mentioned earlier, on Mar. 7, 2014 Defendant Parvizshahi "edited" and "added" a donor file entitled "030514 MH contribution 2008-2014.xls" (hereinafter, the "Donor Document"):⁷⁶



The Donor Document contains detailed donor information from 2008 to 2014, including but not limited to: date of donation, amount, contact name, employer, occupation, city and state of residence, email, phone numbers.⁷⁷ As the first page of the document (at top left) shows, the Donor Document provides detailed information with respect to donations totaling to **\$3,500,594.11**.⁷⁸ In that regard, the Donor Document contained 9793 entries of confidential donor information, including that of the six supporters mentioned earlier: Garnetta Annable, Judy Bertelsen, Kalyn Free, Fayzan Gowani, Bob Hasegawa, and Dale Minami.⁷⁹

N. The Harm Caused by the Data Breach and Defendant Khanna's Accosting of Mike Honda for Congress Supporters: Assessment Costs

⁷⁴ Italics added.

⁷⁵ Beckendorf Decl. ¶31.

⁷⁶ Eberhardt Decl. ¶23.

⁷⁷ Eberhardt Decl. ¶25.

⁷⁸ Eberhardt Decl. ¶26.

⁷⁹ Eberhardt Decl. ¶¶24, 25, 29 (listing the pages of Eberhardt Decl. Exh. 1 where the names of the six supporters appear) & Exh. 1.

1 Mike Honda for Congress has suffered severe harm that was directly caused by the data
 2 breach and Defendant Khanna's solicitation of our donors. Among other things, Mike Honda for
 3 Congress was forced to spend \$5,109.36 in order to assess the extent to which the Honda Folders
 4 had been compromised.⁸⁰

5 Specifically, Mr. Beckendorf devoted 60 hours (at his hourly rate of \$53.12) conducting
 6 and compiling research, participating in conference calls, coordinating team strategy, and
 7 reaching out to donors. That amount totaled to \$3,187.50. Mike Honda for Congress' Opposition
 8 Researcher Robert Eberhardt devoted 15 hours (at his hourly rate of \$100) conducting and
 9 compiling research and participating in conference calls. That amount totaled to \$1,500.00.
 10 Mike Honda for Congress' Communications Director Vedant Patel devoted 15 hours (at his
 11 hourly rate of \$28.12) conducting and compiling research, participating in conference calls, and
 12 developing press and communications strategy. That amount totaled to \$421.86.⁸¹

13 O. The Harm Caused by the Data Breach and Defendant Khanna's Accosting of Mike
 14 Honda for Congress Supporters: Harm to Rep. Honda's Relationship with
 15 Supporters

16 When it comes to fundraising, Rep. Honda abides by a simple rule: As a matter of
 17 respect, one should never solicit supporters of his or her opponent.⁸² Because it is costly to
 18 campaign across a highly populated metropolitan area, it is critical for not only to convince
 19 supporters to donate, but to encourage them to continue to donate up to the legally allowed
 20 limit.⁸³

21 The data breach into Mike Honda for Congress' confidential, proprietary information has
 22 already irreparably harmed it in at least three serious ways. *First*, its supporters were harassed
 23 and intimidated, for Defendant Khanna accosted them at a place that they had least expected:

24
 25

 26 ⁸⁰ Beckendorf Decl. ¶33.

27 ⁸¹ Beckendorf Decl. ¶¶34-36.

28 ⁸² Honda Decl. ¶13.

⁸³ Beckendorf Decl. ¶9.

1 their email inbox.⁸⁴ In response, some donors may have reduced – or stopped altogether – their
 2 financial support for Mike Honda for Congress.⁸⁵

3 *Second*, the data breach into confidential, proprietary information has compromised Rep.
 4 Honda’s relationships with supporters – which, in many cases, he has cultivated for years.⁸⁶

5 *Third*, the data breach personally embarrassed Rep. Honda and harmed his reputation.⁸⁷ Not only
 6 were his supporters subjected to Mr. Khanna’s attacks upon Rep. Honda, but the disclosure of
 7 confidential, proprietary information from the Honda Folders also resulted in adverse publicity
 8 for Rep. Honda.⁸⁸

9 P. Defendants Have Directly Benefited from Their Wrongdoing

10 Each Defendant has directly benefited from their wrongdoing. Defendant Parvizshahi
 11 parlayed his illegal access to the Honda Folders into his current, well compensated position as
 12 Campaign Manager in a high-profile Congressional race.⁸⁹ Defendant Ro for Congress, Inc. and
 13 Defendant Khanna used Honda for Congress’ confidential, proprietary information not only to
 14 harass and intimidate Mike Honda for Congress supporters, but to harm Congressman
 15 Honda’s reputation and political standing.⁹⁰

16 **IV. Legal Analysis: Overview**

17 Mike Honda for Congress must be granted a preliminary injunction, because its claims
 18 abundantly satisfy four essential requirements: (1) it is likely to succeed on the merits, (2)
 19 without a preliminary injunction, is likely to suffer irreparable harm, (3) the balance of equities
 20 tips in its favor, and (4) an injunction “is in the public interest”.⁹¹ The Ninth Circuit employs a
 21 sliding-scale analysis when examining a plaintiff’s likelihood of success on the merits. Namely,

22 ⁸⁴ Honda Decl. ¶¶15, 16.

23 ⁸⁵ Beckendorf Decl. ¶39.

24 ⁸⁶ Honda Decl. ¶20.

25 ⁸⁷ Honda Decl. ¶21.

26 ⁸⁸ Beckendorf Decl. ¶38.

27 ⁸⁹ Beckendorf Decl. ¶8 & Exh. 2.

28 ⁹⁰ Honda Decl. ¶21.

⁹¹ *Winter v. NRDC*, 129 S.Ct. 365, 374 (2008) (quoted by *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131 (9th Cir. 2011) (en banc)).

a preliminary injunction is “appropriate” if (1) the balance of hardships tips “sharply” in the plaintiff’s favor, and (2) the plaintiff raises “*serious questions* going to the merits”.⁹²

IV. Mike Honda for Congress Is Likely To Succeed on the Merits

Mike Honda for Congress is likely to succeed on the merits for two reasons. *First*, Defendant Parvizshahi and Defendant Ro for Congress, Inc. (as Defendant Parvizshahi’s employer) repeatedly violated three provisions of the CFAA: 18 U.S.C. §§1030(a)(2)(C) [theft of computer data], 1030(a)(4) [unauthorized access with intent to defraud], and 1030(a)(5) [unauthorized access resulting in damage to computer]. *Second*, all three Defendants (Parvizshahi, Ro for Congress, Inc., and Khanna) violated 18 U.S.C. §1030(b), for they engaged in a conspiracy to violate the provisions of Sections 1030(a)(2)(C), 1030(a)(4), and 1030(a)(5).

V. Three Overlapping CFAA Issues

We will first address three common overlapping issues under all three CFAA provisions:

A. Defendant Ro for Congress, Inc. Is Vicariously Liable for Defendant Parvizshahi’s CFAA Violations

As a starting point, Defendant Ro for Congress, Inc. is vicariously liable for Defendant Parvizshahi’s CFAA violations. “[C]ourts have held that an employer can be vicariously liable for an employee’s violations of the CFAA if those transgressions occur in the *scope of employment* or the employer directs the employee’s conduct.”⁹³

Here, as we have shown, Defendant Parvizshahi has been employed by Defendant Ro for Congress, Inc. since January 2014. During his employment with Defendant Ro for Congress, Inc., Defendant Parvizshahi “added”, “edited” or otherwise modified Mike Honda for Congress’ confidential, proprietary information on Dropbox *at least 44 times*. In so doing, Defendant Parvizshahi accessed confidential information from the Donor Document, and disseminated that information to Defendants Ro for Congress, Inc. and Defendant Khanna. As a direct result, Mike Honda for Congress supporters such as Fayzan Gowani were accosted by Defendant Khanna over

⁹² *Cottrell, supra*, 632 F.3d at 1134-35 (emphases added).

⁹³ *Netapp, Inc. v. Nimble Storage, Inc.*, 41 F.Supp.3d 816, 835 (N.D. Cal. 2014) (Koh, J.) (italics added).

1 email. Because Defendant Parvizshahi violated the CFAA in the scope of his employment, his
 2 employer (Defendant Ro for Congress, Inc.) is vicariously liable under the CFAA.

3 B. Plaintiff Satisfies the CFAA’s “Without Authorization” or “Exceeding Authorized
 4 Access” Requirement

5 Mike Honda for Congress satisfies CFAA Sections 1030(a)(2), 1030(a)(4), and
 6 1030(a)(5)’s requirement that the perpetrator of the offense (a) had no “authorization” to access
 7 the confidential data or (b) “exceeded his or her authorized access” when he or she accessed the
 8 confidential data. As this Court recently held in *NetApp v. Nimble Storage*, the CFAA flatly bans
 9 a former employee from continuing to access his former employer’s confidential information –
 10 even if his or her access is inadvertently not withdrawn.⁹⁴ The Court likened that situation to
 11 where “a houseguest receives a key, is then told he is no longer welcome but keeps the key, and
 12 the homeowner *neglects to change the lock*.”⁹⁵ Thus, if a former employer accesses such
 13 information after his employment concludes, he or she has acted “without authorization” and
 14 “exceed[ed] authorized access” as a matter of law.

15 The facts here exactly mirror those of *Netapp*. After leaving Arum Group, Defendant
 16 Parvizshahi’s access to the Arum Group’s Dropbox account was inadvertently not withdrawn.
 17 Nevertheless, he continued to repeatedly access the Honda Folders on the Arum Group’s
 18 Dropbox account after leaving Arum Group and after becoming an employee of Defendant Ro for
 19 Congress, Inc. Accordingly, both Defendant Parvizshahi and his employer (Defendant Ro for
 20 Congress, Inc.) acted “without authorization” and “exceed[ed] authorized access” when they
 21 repeatedly accessed the confidential, proprietary information of Mike Honda for Congress.

22 C. Plaintiff Satisfies the CFAA’s Loss/Damage Requirement

23 Furthermore, Mike Honda for Congress satisfies the CFAA’s loss/damage requirement.

24 ⁹⁴ *Netapp, supra*, 41 F.Supp.3d 816, 831-34 (N.D. Cal. 2014) (Koh, J.); *see also Weingand*
 25 *v. Harland Financial Solutions, Inc.*, 2012 WL 2327660 (N.D. Cal. June 19, 2012).

26 ⁹⁵ *Netapp, supra*, 41 F.Supp.3d at 832 (italics added). Plaintiff also satisfies the CFAA’s
 27 “protected computer” requirement, for Defendant Parvizshahi accessed Arum Group’s Dropbox
 28 account by engaging in “conduct involv[ing] interstate or foreign communication”: namely,
 using the internet. *See Shurgard Storage Centers, Inc. v. Safeguard Self Storage, Inc.*, 119
 F.Supp.2d 1121, 1125 (W.D. Wash. 2000).

1 To bring a civil action under the CFAA, a plaintiff must show that the alleged violations caused
 2 “damage” or a “loss” of at least \$5,000.⁹⁶ *First*, Mike Honda for Congress satisfies CFAA’s
 3 requirement with respect to “loss”.

4 The CFAA defines loss as “any reasonable cost to any victim, including the *cost of*
 5 *responding to an offense[.]*”⁹⁷ As the Fourth Circuit and this Court have held, the “cost of
 6 investigating and identifying the CFAA, including many hours of valuable time away from day-
 7 to-day responsibilities” qualifies as the cost of responding to a CFAA offense, provided that the
 8 response costs totaled to at least \$5000.⁹⁸

9 Here, as shown earlier, Mike Honda for Congress was forced to shift its Campaign
 10 Manager, Opposition Researcher, and Press Secretary to investigate and identify the CFAA
 11 violation: namely, the data breach that was discovered on May 31, 2016. Because the response
 12 costs for that effort totaled to \$5,109.36, Mike Honda for Congress satisfies the CFAA’s \$5,000
 13 “loss” requirement.

14 *Second*, Mike Honda for Congress satisfies CFAA’s requirement with respect to
 15 “damage”. It is settled law that the misappropriation of trade secrets or confidential information
 16 suffices to establish the \$5,000 jurisdictional threshold, for misappropriation impairs the integrity
 17 of such data or information.⁹⁹

18 Here, it is beyond dispute that Defendant Parvizshahi misappropriated Mike Honda for
 19 Congress’ confidential, proprietary information. Specifically, Defendant Parvizshahi “added” a
 20 number of Dropbox files in the Honda Folders. As shown earlier, Dropbox files labeled as
 21 “added” are the most interesting. If the “added” file had existed *before* the “added” action was
 22 taken, it means that someone had removed the file to another location (e.g., his or her desktop) –
 23

24 ⁹⁶ *E.g., A.V. ex rel. Vanderhye v. iParadigms, LLC*, 562 F.3d 630, 646 (4th Cir. 2009) (*citing*
 25 18 U.S.C. §1030(g) & (a)(5)(B)(i)).

26 ⁹⁷ 18 U.S.C. §1030(e)(11).

27 ⁹⁸ *iParadigms, supra*, 562 F.3d at 646 (*citing with approval SuccessFactors, Inc. v.*
 28 *Softscape, Inc.*, 544 F.Supp.2d 975, 980-81 (N.D. Cal. 2008)).

⁹⁹ *E.g., Four Seasons Hotel & Resorts BV v. Consorcio Barr, SA*, 267 F.Supp.2d 1268, 1324
 (S.D. Fla. 2003); *Shurgard, supra*, 119 F.Supp.2d at 1126-27.

1 and then *moved the file back* to the shared location within the Dropbox account.¹⁰⁰

2 As shown earlier, Defendant Parvizshahi “added”, “edited”, or in some way modified
3 individual documents at least 44 times during his employment with Ro Khanna for Congress.
4 What is more, Defendant Parvizshahi disseminated the misappropriated information to Defendant
5 Khanna and Defendant Ro for Congress, Inc. Indeed, one of the documents that had existed
6 *before* it was “added” by Defendant Parvizshahi – the Donor Document – contained the email
7 addresses of all six Honda for Congress declarants that Defendant Khanna had accosted by email:
8 Garnetta Annable, Judy Bertelsen, Kalyn Free, Fayzan Gowani, Bob Hasegawa, and Dale
9 Minami. Because Defendant Parvizshahi misappropriated its confidential, proprietary
10 information, Mike Honda for Congress meet the CFAA’s damage requirement as a matter of law.

11 **VI. Defendants Parvizshahi and Ro for Congress, Inc. Violated CFAA Section**
12 **1030(a)(2)(C) [Theft of Computer Data]**

13 Defendant Parvizshahi and (through vicariously liability) Ro for Congress, Inc. violated
14 CFAA Section 1030(a)(2)(C), which bans the theft of computer data. Under that provision,
15 “[w]hoever ... intentionally accesses a computer without authorization or exceeds authorized
16 access, and thereby obtains ... information from any protected computer if the conduct involved
17 an interstate or foreign communication ... shall be punished”.¹⁰¹

18 As shown above, Defendant Parvizshahi repeatedly accessed and misappropriated Mike
19 Honda for Congress’ confidential, proprietary information after leaving Arum Group and joining
20 Defendant Ro for Congress, Inc. Accordingly, both he and Ro for Congress, Inc. are liable under
21 Section 1030(a)(2)(C).

22 **VII. Defendants Parvizshahi and Ro for Congress, Inc. Violated CFAA Section 1030(a)(4)**
23 **[Unauthorized Access with Intent to Defraud]**

24 In addition, Defendant Parvizshahi and (through vicariously liability) Ro for Congress,
25 Inc. violated CFAA Section 1030(a)(4), which bans accessing a computer with “intent to
26 defraud”. As this Court has made clear, “fraud” under the CFAA “only requires a showing of

27 ¹⁰⁰ O’Day Decl. ¶¶25-27.

28 ¹⁰¹ *Shurgard, supra*, 119 F.Supp.2d at 1124.

1 unlawful access; there is *no need* to plead the elements of common law fraud[.]”¹⁰²

2 As shown above, Defendant Parvizshahi unlawfully Mike Honda for Congress’
3 confidential, proprietary information after leaving Arum Group and joining Defendant Ro for
4 Congress, Inc. Accordingly, both he and Ro for Congress, Inc. are liable under Section
5 1030(a)(4).

6 **VIII. Defendants Parvizshahi and Ro for Congress, Inc. Violated CFAA Section 1030(a)(5)**
7 **[Unauthorized Access Resulting in Damage to Computer]**

8 Defendants Parvizshahi and (through vicarious liability) Ro for Congress, Inc. also
9 violated CFAA Section 1030(a)(5), which bans accessing a computer, without authorization, that
10 results in “damage”.¹⁰³ As we have shown, Mike Honda for Congress can show that it suffered
11 damage, for Defendant Parvizshahi misappropriated its confidential, proprietary information.
12 Moreover, as we have shown, Defendant Parvizshahi accessed Arum Group’s Dropbox account
13 without authorization as a matter of law, for he accessed the Dropbox account *after* his
14 employment with Arum Group had ended. Therefore, Defendants Parvizshahi and Ro for
15 Congress, Inc. violated CFAA Section 1030(a)(5).

16 **IX. Defendants Parvizshahi, Ro for Congress, Inc., and Khanna Are Liable for**
17 **Conspiracy [CFAA Section 1030(b)]**

18 Finally, Defendant Parvizshahi, Defendant Ro for Congress, Inc., and Defendant Khanna
19 are liable for conspiracy under CFAA Section 1030(b). To show a conspiracy under the CFAA, a
20 plaintiff must show that “defendants reached some explicit or tacit understanding or
21 agreement.”¹⁰⁴ Here, beginning approximately January 2014, Defendant Parvizshahi, Defendant
22 Ro for Congress, Inc., and Defendant Khanna had an understanding, whereby (1) Defendant
23 Parvizshahi obtained Mike Honda for Congress’ confidential, proprietary information from the
24 Arum Group’s Dropbox account, and (2) all three Defendants used that information for their
25

26 ¹⁰² *Netapp, supra*, 41 F.Supp.3d at 833 (italics added).

27 ¹⁰³ *Shurgard, supra*, 119 F.Supp.2d at 1126.

28 ¹⁰⁴ *Alfus v. Pyramid Tech. Corp.*, 745 F.Supp. 1511, 1521 (N.D. Cal. 1990) (*quoted by*
Netapp, supra, 41 F.Supp.3d at 836).

benefit and to the detriment of Mike Honda for Congress, Inc.

Among other things, that collaboration between the Defendants enabled them to create what Defendant Khanna called a “friends list” – one that consists of supporters of Mike Honda for Congress. In that regard, Defendant Khanna personally responded to inquiries from Mike Honda for Congress supporters regarding the “friends list”; and, as needed, directed Defendant Parvizshahi to remove certain Mike Honda for Congress supporters (like Fayzan Gowani) from the “friends list”. Because they had – and demonstrably acted on – an understanding to jointly engage in conduct that violated the CFAA, all Defendants are liable for conspiracy under Section 1030(b).

X. Mike Honda for Congress Continues to Suffer Irreparable Harm

Mike Honda for Congress has already suffered irreparable harm – and will continue to suffer irreparable harm – unless it is granted a preliminary injunction. An injunction is called for if wrongdoing has harmed one’s reputation or resulted in the loss of goodwill.¹⁰⁵ The illegal data breach perpetrated by Defendants has already personally embarrassed Rep. Honda, compromised his relationship with supporters, and harmed his reputation. Unless an injunction issues against them, Defendants will *continue* to use the information that they illegally obtained for their own benefit and to Rep. Honda’s detriment.

XI. The Balance of Hardships Tips Sharply in Mike Honda for Congress’ Favor

With the general election looming, the balance of hardships tips sharply in Mike Honda for Congress’ favor. “It is obvious that compliance with the law is in the public interest.”¹⁰⁶ Unless an injunction is granted, Defendants will continue to reap political and economic benefits from violating the CFAA. Therefore, there can be no question that the balance of hardships tips sharply in Mike Honda for Congress’ favor.

VII. Plaintiffs Are Entitled to a Preliminary Injunction

This brief has painstakingly shown that Mike Honda for Congress is entitled to a

¹⁰⁵ *E.g., YourNetDating, LLC v. Mitchell*, 88 F.Supp.2d 870 (N.D. Ill. 2000); *Southeastern Mechanical Svcs., Inc. v. Broday*, No. 08-CV-01151, 2008 BL 232599 (M.D. Fla. Oct. 15, 2008).

¹⁰⁶ *N.D. v. Haw. Dep’t of Educ.*, 600 F.3d 1104, 1113 (9th Cir. 2010).

preliminary injunction. First, it is not just “likely”, but certain that it will prevail on the merits. Second, Mike Honda for Congress continues to suffer irreparable harm. Finally, the balance of hardships tip sharply in its favor – a critical circumstance to which the Ninth Circuit pays special heed.¹⁰⁷ Finally, the public will greatly benefit from injunctive relief, for Defendants will be ordered to stop violating federal law. For all these reasons, the Court must grant Mike Honda for Congress swift, injunctive relief.

VIII. Conclusion

Laws must be honored, not broken. In light of Defendant Parvizshahi, Defendant Ro for Congress, Inc., and Defendant Khanna’s deliberate, repeated, and shameful wrongdoing, Mike Honda for Congress respectfully asks the Court to swiftly grant all appropriate injunctive relief.

DATED: Sept. 22, 2016

Respectfully submitted,

By: /s/ Gautam Dutta
GAUTAM DUTTA, ESQ.

Attorneys for Plaintiff

MIKE HONDA FOR CONGRESS

¹⁰⁷ *Cottrell, supra*, 632 F.3d at 1134-35 (emphases added).